IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.920/06

Sharad Bhaskar Rajnor .....Applicant

V/s.

The state of Maharashtra .... Respondent

Shri.M.B. Shirsath Adv. holding for Shri.Mahendra Sandyanshiv for the applicant.
Shri.R.Y.Mirza APP for the State

CORAM : V.M. KANADE, J.
DATE : 28/03/06

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 29/01/2005 in connection with C.R.No.I-17/05 registered with Malegaon Taluka Police Station, Malegaon, Dist.Nashik for the offences punishable U/s.354, 376, 302 of IPC.

3. It is the case of the prosecution that on 28/01/2005, complainant saw the applicant standing near her house and her daughter Kamal was shouting loudly that the applicant was teasing her and

therefore, she started running towards her mother.

4. It is alleged that the applicant followed her and being annoyed the applicant caught hold of Kamal and pushed her in a well. Since nobody tried to save her she drowned and died. Post-mortum which was performed indicated that she had sexual intercourse prior to her death.

5. I have perused the statement of witnesses and chargesheet has been filed by police. There is delay in recording statements of other witnesses. It is difficult to accept that when girl had been pushed in a well, none of the villagers would have attempted to save her. There is also apparent inconsistency between the statement of mother of deceased and the other witnesses. The applicant is in jail since the date of his arrest i.e. from 29/01/2005, no complaint was lodged on 28/01/2005 which was date of incident. The complaint itself lodged after a delay of twenty four hours. The statements of the other witnesses also were recorded thereafter which create doubt about the prosecution case. There is contradiction in the statement of original complainant and other witnesses

regarding their presence at the place of incident. One of the witness Namdeo Chormale, Police Patil had immediately on the same day i.e. on 28/01/2005 informed the police that deceased Kamal had fallen in the well and had died. He does not state that the applicant had thrown deceased in the well. Police have not recorded statement of persons who had removed body from the well. Considering these facts and circumstances, the applicant is entitled to be released on bail.

6. The applicant, therefore be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. The applicant shall report to Malegaon Taluka Police Station, Malegaon, Dist.Nashik once in a month.

7. If any attempt is made to threaten the prosecution witnesses or to tamper with the evidence, liberty is given to the Public Prosecutor to apply for cancellation of bail.

8. Trial court shall not be influenced by any observations made by this court while passing this

order and the same may not be construed as an expression of opinion of the case and decide the case on its own merit and in accordance with law.

9. Application is accordingly disposed of.

V.M. KANADE, J.